STATE OF MICHIGAN

COURT OF APPEALS

AUTO OWNERS INSURANCE COMPANY, Plaintiff-Appellee,	UNPUBLISHED July 20, 2010
v	No. 291761 Eaton Circuit Court
PROGRESSIVE MICHIGAN INSURANCE COMPANY, Defendant-Appellant.	LC No. 07-001574-NF

Before: HOEKSTRA, P.J., and JANSEN and BECKERING, JJ.

PER CURIAM.

In this priority dispute between no-fault insurers,[1] defendant Progressive Michigan Insurance Company (Progressive) appeals by right the trial court's order granting summary disposition in favor of plaintiff Auto Owners Insurance Company (Auto Owners). We reverse and remand for further proceedings consistent with this opinion. This appeal has been decided without oral argument. MCR 7.214(E).

Progressive is the alleged insurer of the injured person, Jeffrey Cramar. Auto Owners is the insurer of the vehicle in which Cramar was riding when the accident occurred. Auto Owners paid Cramar's claims for personal injury protection (PIP) insurance benefits and then sought indemnification from Progressive. When that was not forthcoming, Auto Owners brought this suit seeking a declaration that Progressive was the higher-priority insurer. The policy under which Progressive was arguably liable was a commercial automobile policy issued to C & M Excavating, a partnership of which Cramar's father (Cramar, Sr.) was a member.

Progressive moved for summary disposition, arguing that the only entity identified as an "insured" for PIP purposes in the Progressive policy was C & M Excavating. Progressive pointed out that Cramar Sr. was only named as an insured for purposes of *liability* claims.

[1] This case does not concern whether Jeffrey Cramar is entitled to no-fault benefits, but relates solely to a question of reimbursement from one insurance company for benefits paid out by another insurance company.

Progressive asserted that because the named insured was a business, and not Cramar Sr. himself, PIP benefits were not available to Jeffrey Cramar.[2]

Auto Owners argued that two of the vehicles covered by the Progressive policy were not owned by the business, but were Cramar Sr.'s personal vehicles. Auto Owners contended that Cramar Sr. had put these two vehicles on the commercial policy in order to have no-fault insurance on them. Thus, Auto Owners argued that the Progressive policy was not actually a business policy. Auto Owners asserted that Progressive had listed Cramar, Sr. as an additional insured for liability purposes because he was the owner of the vehicles, and that this had been intended to ensure that he had no-fault coverage. Therefore, Auto Owners argued that Cramar Sr. was a person named in the Progressive policy and that PIP benefits extended to his resident relative.

The trial court initially agreed with Progressive, finding that the only named insured on the Progressive policy was C & M Excavating, and that under the case law cited by Progressive, PIP benefits did not extend to Jeffrey Cramar. The court observed that the terms "named insured" and "additional insured" were not equivalent, citing *Thiel v Assurance Co of America*, unpublished opinion of the United States District Court, issued December 5, 2005 (ED Mich, Docket No. 04-60169). The court also noted that the endorsement making Cramar Sr. an additional insured did not provide PIP benefits. Instead, the court noted that the Progressive policy limited PIP coverage to persons injured while occupying an "insured auto" or as a result of an accident involving an "insured auto."

Plaintiff moved for reconsideration, citing the recently released *Titan Ins Co v Northland Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued September 11, 2008 (Docket No. 275866). The court granted the motion for reconsideration and entered judgment in favor of Auto Owners, stating that although it did not think "its earlier opinion was necessarily in error," this Court's opinion in *Titan* convinced it "that there is reasonable disagreement on this issue and the Court of Appeals would reverse this court's decision if that decision is left to stand." In particular, the trial court indicated that it was reversing its original ruling because the majority in *Titan* had not relied on the same cases that had been cited by *Thiel*, e.g., *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 264; 548 NW2d 698 (1996), and *Harwood v Auto-Owners Ins Co*, 211 Mich App 249; 535 NW2d 207 (1995). The trial court believed that the majority opinion in *Titan* should control, rather than the earlier opinions in *Cvengros* or *Harwood*.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Issues of contract interpretation are questions of law that we also review de novo. *Sweebe v Sweebe*, 474 Mich 151, 154; 712 NW2d 708 (2006).

The statutory language at issue in this case is found in MCL 500.3114(1), which provides in pertinent part:

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[2] Under MCL 500.3114, PIP benefits are only available to the named insured or an injured resident relative of the named insured.

> Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident. . . .

We conclude that the trial court erred in relying on *Titan* to reverse its original decision and grant summary disposition in favor of Auto Owners. *Titan* is, at best, only persuasive, and does not represent binding precedent. MCR 7.215(C)(1). Despite the language of *Titan*, the trial court remained bound by *Cvengros* and *Harwood*, regardless of whether the reasoning of those cases may have become questionable in light of current principles of statutory construction. MCR 7.215(C)(2). Moreover, there are factual distinctions between the present case and *Titan*. In *Titan*, the claimant qualified for PIP benefits under the language of the *contract* itself, which defined him as a "lessor" and defined "[a]n [i]nsured" to include a lessor. The *Titan* majority did not at any time hold that an "additional insured" on a policy necessarily qualifies as a "named insured."

Unlike in *Titan*, the claimant in the present case had no independent claim to PIP benefits under the language of the contract. Instead, the present claimant qualifies for PIP benefits, if at all, because of the provisions of the *statute*. In other words, PIP benefits are owed to Jeffrey Cramar only if Cramar Sr. qualifies as a "named insured." Of note, both the concurrence and dissent in *Titan* found that the claimant in that case was *not* a "named insured" for purposes of the commercial policy.

It is well established that the statutory reference to a person "named in the policy" is a term of art, synonymous with the phrase "named insured." *State Farm Fire & Cas Co v Old Republic Ins Co*, 234 Mich App 465, 469; 595 NW2d 149 (1999); *Harwood*, 211 Mich App at 253. This law constitutes binding precedent. The policy identifies Cramar Sr. as a "rated driver" and as an "additional insured" on an endorsement amending the policy. Rated drivers are not "named insureds." *Id*. Further, Cramar Sr. was listed as an "additional insured" only for purposes of liability. Liability coverage is distinct from PIP coverage. *Sisk-Rathburn v Farm Bureau Gen Ins Co*, 279 Mich App 425, 428; 760 NW2d 878 (2008). The policy in this case extended PIP coverage only to persons occupying an "insured auto" or injured in an accident involving an "insured auto." Thus, the argument that the statutory language includes Cramar Sr. as a person entitled to PIP benefits is unpersuasive.

It is irrelevant whether Cramar Sr. believed he had the equivalent of a PIP policy for his personal automobiles. The inclusion of Cramar Sr.'s personal vehicles on the commercial policy does not lead to the conclusion that Progressive intended to treat the commercial policy as a personal policy.

The statutory phrase "named in the policy" is interpreted in binding case law to mean "named insured." Here, the named insured was C & M Excavating. Cramar Sr. was named as a rated driver only. This did not make him a named insured. And although the endorsement made him an additional insured, it did so for purposes of liability only—*not* PIP coverage. This was insufficient to make Cramar Sr. a named insured for purposes of PIP coverage. For these reasons, we reverse the trial court's grant of summary disposition in favor of Auto Owners.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Kathleen Jansen
/s/ Jane M. Beckering